

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kenneth M. Buckland
Serial No.: 09/657,068
Filing Date: September 7, 2000
Confirmation No.: 1585
Group Art Unit: 2616
Examiner: Robert W. Wilson
Title: METHOD AND SYSTEM FOR PROCESSING TRAFFIC
 IN AN ACCESS NETWORK

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action issued December 5, 2007, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 20-25 currently stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1, 3-7, 9-16, 18-33, 35-38, and 40 stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification to convey possession of the invention. Claims 1, 3-7, 9-16, 18-33, 35-38, and 40 stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification to make and/or use the invention. Claims 1, 3-7, 9-16, 18, and 19 currently stand rejected under 35 U.S.C. §102(e) as being anticipated by Keller-Tuberg. Claims 20-25 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keller-Tuberg in view of Ksirasagar. Claims 26-33, 35-38, and 40 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keller-Tuberg. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of December 5, 2007, the Examiner indicates that aggregating packets without regard to any destination address as provided in the claimed invention is physically impossible and not enabled by Applicant's specification. Contrary to the Examiner's assertion, Applicant's specification clearly states that ingress traffic from CPE devices 12 are aggregated without respect to destination for transport to the backbone network 16. See page 9, lines 16-21, of Applicant's specification. This is possible because no routing decisions are performed for ingress traffic. See page 9, lines 25-28, of Applicant's specification.

Accordingly, packets from ingress traffic streams received at multiple CPE devices 12 are combined together for transport over a single communication link 22 to the backbone network 16 using switch core 44 and transmit interface 72 within access device 20. Since no routing decisions are made in access device 20 for ingress traffic, there is no requirement for ordering the packets by destination when aggregating the plurality of ingress traffic streams for transporting the packets to the backbone network 16 over the single communication link 22. As a result, packets can be provided in any order without regard to destination when aggregating the plurality of ingress traffic streams received at the plurality of CPE devices 12. Accordingly, Applicant's specification clearly provides disclosure to sufficiently convey to those of skill in the art the features of the claimed invention.

With respect to the Examiner's delineation of layer 3 and layer 2 destination addresses, the Keller-Tuberg patent clearly requires that the subscriber's incoming packet flows are multiplexed into shared service provider packet flows using multiplexing table. See col. 5, line 54, to col. 6, line 5, of the Keller-Tuberg patent. Thus, the destination address of a packet is used to determine the VP/VC reference for the ATM cells carrying the packet and the ATM cells for the packet are then provided to the appropriate one of a plurality of distinct VP/VC packet flows for transport to the dedicated ISP associated therewith. As a result, the Keller-Tuberg patent requires the use of packet destination addresses and ATM VP/VC destination information in multiplexing its subscriber packet flows. The claimed invention aggregates its plurality of ingress traffic streams into a single combined traffic stream without regard to any destination of any packet from any ingress traffic stream. Accordingly, the Keller-Tuberg patent does not aggregate ingress traffic streams without regard to any destination as required by the claimed invention.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Action of July 26, 2007 to establish a prima facie case of anticipation and obviousness of the claims in the Application rejected under 35 U.S.C. §102(e) and

§103(a). There has been no proper showing that the Keller-Tuberg patent teaches each and every feature of the claimed invention. There has been no mention of the three criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would provide any indication to those of skill in the art that the Keller-Tuberg patent could be modified in any manner. The Examiner has also not provided any reasons how the proposed modification of the reference would have any expectation of success whatsoever let alone a reasonable expectation of success.

As for teaching the claimed invention, Independent Claims 1, 16, 20, and 26 recite in general an ability to aggregate ingress traffic streams into a single combined traffic stream without regard to any destination of any packet from any ingress traffic stream. By contrast, the Keller-Tuberg patent merely discloses multiplexing traffic from a large number of subscribers into a smaller number of ATM flows. (See col. 2, lines 43-45, of the Keller-Tuberg patent). In addition, the Keller-Tuberg patent discloses multiplexing packet flows from many individual subscribers into shared packet flows based on the ISP destination address for the packet and according to dedicated VP/VC flows. (See FIGURE 2, multiplexing table, and col. 5, line 54, to col. 6, line 5, of the Keller-Tuberg patent). The Keller-Tuberg patent specifically teaches using path identifiers associated with a destination ISP to multiplex traffic. (See col. 5, lines 54-60, of the Keller-Tuberg patent). As a result, the Keller-Tuberg patent expressly teaches away from a capability of aggregating a plurality of ingress traffic streams into a single combined traffic stream without regard to any destination of any packet from any ingress traffic stream as required by the claimed invention.

Based on the remarks above, the Keller-Tuberg patent is insufficient to support a rejection of the claims. Therefore, Applicant respectfully submits that Claims 1, 3-7, 9-16, 18-33, 35-38, and 40 are patentably distinct from the proposed prior art combination.

CONCLUSION

Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read 'Charles S. Fish', is written over the printed name.

Charles S. Fish

Reg. No. 35,870

January 7, 2008

Correspondence Address:

2001 Ross Avenue, Suite 600

Dallas, Texas 75201-2980

(214) 953-6507

Customer Number: 05073